IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/08/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.3952 of 2001

P.Devadoss
Tamil Pandit
Sree Sowdambika Middle School
Bodinaickanur
Theni District. .. Petitioner

-Vs-

1.The State of Tamilnadu
Rep. by its Secretary to Govt.,
Education Department
Fort St. George
Chennai 600 009.
2.The Director of Elementary
Education, College Road,
Chennai 600 006.
3.The District Elementary
Educational Officer
Theni District, Theni.
4.The Chief Educational Officer
Theni District, Theni.
5.The Correspondent
Sri Sowdambika Middle School
Bodinaickanur
Theni District. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for issue of a writ of mandamus directing the respondents not to allow the 5th respondent management school to function as minority institution without declaration from the Government of Tamilnadu as per the order of the Supreme Court made in IA No.20 in W.P.(C) No.317 of 1993 dated 17.10.94 and GO Ms.No.371 Education, Science and Technology Department dated 10.5.1995 and GO Ms.No.270 dated 17.6.98 and enforce the provisions of the Tamilnadu Private School Regulation Act and to review all the appointments and promotions made in respondent management school and issue a direction to the respondent management school to follow the provisions of the Tamil Nadu Private Schools Regulation Act and to function in accordance with the Tamil Nadu Private Schools Regulation Act.

!For Petitioner : Mr.R.Saseetharan

^For Respondents : Mr.P.Rathinavelu
Government Advocate for
RR1 to 4

Mr.N.Paul Vasanthakumar

:ORDER

Invoking the writ jurisdiction of this Court, the petitioner has sought for a writ of mandamus forbearing the respondents 1 to 4 not to allow the 5th respondent management school to function as minority institution without declaration from the Government of Tamil Nadu as per the orders of the Supreme Court made in IA No.20 in W.P.(C) No.317 of 1993 dated 17.10.94 and G.O. Ms.No.371 Education, Science and Technology Department dated 10.5.1995 and G.O. Ms.No.270 dated 17.6.98, enforcing the provisions of the Tamilnadu Private School Regulation Act, reviewing all the appointments and promotions made in the fifth respondent management school and issuing a direction to the fifth respondent management school to follow the provisions of the Tamil Nadu Private Schools Regulation Act and to function in accordance with the Tamil Nadu Private Schools Regulation Act.

2. Affidavit filed in support of the writ application and the counter affidavit filed by the fifth respondent are perused.
3. The learned Counsel for the petitioner would contend that on appointment as a Tamil Pandit, the petitioner has been working in the school being managed by the fifth respondent; that the same is functioning as the minority institution and has claimed exemption from various provisions of the Tamil Nadu Private Schools Regulation Act; that there are so many lapses noticed in the management; that the said school was functioning without a Secretary to the school, but under the head of the Correspondent; that the management claimed that it is the linguistic minority institution, as the same is administered for the benefit of the Devanga Chettiar community, who were speaking Kannada language as their mother tongue; that the fifth respondent school was not a linguistic minority institution; and that the same was not entitled to any protection or right granted to the minority institution under Articles 29 and 30 of the Constitution of India.
4. Added further, the learned Counsel that certain civil proceedings were initiated in the past, wherein they got the declaration; that the same was also challenged by the Government by way of second appeal before the High Court, wherein the decree of the District Munsif's Court declaring them as minority institution has been affirmed; that taking advantage of the same, the fifth respondent school which actually is not in the nature of linguistic minority institution, has been enjoying the benefits.
5. The learned Counsel for the petitioner would further submit that the petitioner was, on flimsy reasons, suspended by the management due to the vendetta; that he has also challenged the same by way of writ application, which is also pending before this Court; that if this school is not a minority institution, then it would fall within the ambit of the Tamil Nadu Private Schools Regulation Act, 1973; that for taking action against the teaching staff therein, certain safeguards are mentioned under the provisions of the said enactment, and under the circumstances, it has become necessary for the

petitioner to seek the relief that it is not a minority institution; that apart from that, the respondents 1 to 4, despite the two G.Os. passed by the Government of Tamil Nadu in G.O. Ms.No.371 dated 10.5.1995 and G.O.Ms.No.270 dated 17.6.1998, have not taken any action, nor had they taken steps not to allow the fifth respondent to act as a minority institution, and hence, it has become necessary to file the writ petition before this Court.

6. This Court heard the learned Government Advocate appearing for the respondents 1 to 4 on those contentions. He would represent that the fifth respondent institution has not yet been declared by the Government as minority institution, and it is still a non-minority institution.

7. The learned Counsel appearing for the fifth respondent would submit that the petitioner before this Court is a teaching staff, who suffered a suspension for his delinquencies; that the same is also the subject matter in the writ petition before this Court; that the petitioner has no locus standi to question the character of the institution as one minority institution, in question; that it has been declared so by a Civil Court; that the said declaration has been affirmed by the High Court in second appeal; but, the Government has not challenged the same; that it is true that the two Government Orders have been passed by the Tamil Nadu Government as referred to by the petitioner's side; but, even today, the institution is being run as the minority institution, and it has not been declared otherwise.

8. In support of his contention, the learned Counsel for the fifth respondent relied on the decisions of this Court reported in (1) AIR 1 997 MADRAS 386 (MANONMANIAM UNIVERSITY AND OTHERS V. KUMARAGURUBARA SWAMIGAL ARTS
COLLEGE AND OTHERS; (2) 1999 (i) CTC 121 (ST. IGNATIUS HIGHER SECONDARY SCHOOL, KURUMBANAI AND OTHERS V. DIRECTOR OF SCHOOL EDUCATION) and (3) 2001 (4) CTC 641 (THE SECRETARY, D.G. VAISHNAV COLLEGE AND ANOTHER V. DR.T.VENKATARAMAN).

9. After careful consideration of the rival submissions made and scrutiny of the factual and legal position, this Court is of the considered opinion that the writ petition warrants a dismissal in the hands of this Court.

10. It is not in controversy that the petitioner before this Court was employed in the fifth respondent school on 20.1.1983 as a Tamil Pandit, and he has been working so. The fifth respondent school was declared as a linguistic minority institution by a decree in O.S.No.38/78 on the file of the District Munsif's Court, Periyakulam, and the same was affirmed by the Sub Court, Periyakulam, on an appeal filed by the Government in A.S.No.47/81. Not satisfied, the Government preferred a second appeal before this Court in S.A.No.695 of 1982, and the second appeal was dismissed by this Court. In effect, the disposal of the second appeal was the affirmation of the judgments of the Courts below. Thus, the declaration has become final, and the Government has not agitated over the same.

11. At this juncture, it is pertinent to point out that the petitioner herein, who suffered a suspension order by the management on 17.4.2000, brought forth a writ application, questioning the same before this Court, within a period of two months therefrom. It is further pertinent to point out that after he suffered a suspension in the hands of the fifth respondent, he has brought forth the instant writ petition in February 2001. This would be indicative of the fact that the petitioner aggrieved over the

suspension, has brought forth this writ application. It is highly doubtful whether the petitioner has got any locus standi to question the status enjoyed by the fifth respondent as linguistic minority institution. It is brought to the notice of the Court that two Government Orders have been passed one in G.O.Ms.No.371 dated 10.5.1995 and the other in G.O.Ms.No.270 dated 17.6.1998 . Taking the Court through both these G.Os., the learned Counsel for the petitioner would submit that the fifth respondent institution cannot be termed as linguistic minority institution in view of the Government Orders. This Court is unable to agree with him, in view of the judicial pronouncements by this Court.

12. This Court had an occasion to consider the question as to the minority institution in a case reported in 1999 (I) CTC 121 (ST. IGNATIUS HIGHER SECONDARY SCHOOL, KURUMBANAI AND OTHERS V. DIRECTOR OF SCHOOL EDUCATION). In that case, the order of the Supreme Court in I.A. No.20 in T.M.A. PAI FOUNDATION AND OTHERS V. STATE OF KARNATAKA AND OTHERS, W.P.(C) No.317 of 1993 was relied on by the State, wherein the Apex Court has pointed out that the direction would be binding on the institutions, who are the respondents before the Apex Court in that matter, and no one else.

13. So far as the G.Os. are concerned, in the judgment of the Division Bench of this Court reported in 2001 (4) CTC 641 (THE SECRETARY, D.G.VAISHNAV COLLEGE, ARUMBAKKAM AND ANOTHER V. DR.T.VENKATARAMAN AND THREE OTHERS), it has been held thus:

"Government cannot by issue of G.O. call upon Educational Institutions which have obtained decree of Civil Court, which has become final, to apply for grant of minority status afresh especially when such educational institutions are not parties to the order of Supreme Court of India. Operation of Order is in rem. Order of Supreme Court of India not to take cognizance of minority status granted by Civil Court is not binding on persons who are not parties in proceedings before it. Such order cannot operate in rem."

In the instant case, the contention of the learned Counsel for the petitioner that the G.Os. have been passed, and thus, it has got to be found that the minority status is lost by the fifth respondent institution cannot be taken into account at all, in view of the decision cited supra. Thus, without any hesitation, it can be stated that the judgments of this Court referred to above have got application to the present facts of the case.

14. In the light of the above reasons, it can be held that the petitioner has no locus standi to question the character of the fifth respondent; and that the G.Os. cannot bind the fifth respondent institution in view of the decree passed by the Civil Court, declaring them as linguistic minority institution. This Court is of the view that the contentions put forth by the petitioner's side are of no avail.

15. In the result, this writ petition fails, and the same is dismissed leaving the parties to bear their costs.

Index: yes
Internet: yes

To:
1.The State of Tamilnadu

Rep. by its Secretary to Govt.,
Education Department
Fort St. George
Chennai 600 009.
2.The Director of Elementary
Education, College Road,
Chennai 600 006.
3.The District Elementary
Educational Officer
Theni District, Theni.
4.The Chief Educational Officer
Theni District, Theni.

nsv/